INITIAL DECISION RELEASE NO. 474
ADMINISTRATIVE PROCEEDING
FILE NO. 3-14684

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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| In the Matter of | : | |
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| ANTHONY FIELDS, CPA d/b/a | : | INITIAL DECISION |
| ANTHONY FIELDS & ASSOCIATES and d/b/a | : | December 5, 2012 |
| PLATINUM SECURITIES BROKERS | : | |

APPEARANCES: Duane K. Thompson and Donna K. Norman for the Division of Enforcement, Securities and Exchange Commission

Anthony Fields pro se

BEFORE: Carol Fox Foelak, Administrative Law Judge

## SUMMARY

This Initial Decision (ID) concludes that Respondent Anthony Fields, CPA (Fields) d/b/a Anthony Fields & Associates (AFA) and d/b/a Platinum Securities Brokers (Platinum), violated the antifraud, registration, and other provisions of the federal securities laws. Fields offered fictitious "prime bank" instruments for sale on social media websites and acted as an unregistered broker. Additionally, he registered AFA as an investment adviser when ineligible to do so and made misrepresentations on AFA's and Platinum's websites and in AFA's Form ADV and brochure. The ID orders Fields to cease and desist from violations and to pay a civil money penalty of $150,000; imposes broker, dealer, investment adviser, and other bars; and revokes AFA's registration as an investment adviser.

## I. INTRODUCTION

### A. Procedural Background

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on January 4, 2012, pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act). The undersigned held a two-day hearing on May 21-22, 2012, in Washington,

D.C.[1] Fields testified in the Division of Enforcement's (Division) case and in his own case. John Stark (Stark) testified on behalf of the Division as an expert on prime bank securities fraud schemes.[2] There were no other witnesses. Numerous exhibits were admitted into evidence.

The findings and conclusions in this ID are based on the record. Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the parties' Proposed Findings of Fact and Conclusions of Law were considered. All arguments and proposed findings and conclusions that are inconsistent with this ID were considered and rejected.

### B. Allegations and Arguments of the Parties

The OIP alleges that, during 2010 and 2011, Fields made fraudulent offers of fictitious securities on social media websites; when ineligible to register with the Commission as an investment adviser, filed a Form ADV to so register that contained false information; made misrepresentations on AFA's and Platinum's websites and in AFA's brochure; failed to adopt, implement, or maintain various required books and records; and acted as a broker without being registered.

The Division is seeking a cease-and-desist order, civil money penalties, bars, and revocation. Respondent argues that the charges are unproven and no sanctions should be imposed.

## II. FINDINGS OF FACT

As discussed below, Fields offered "prime bank" instruments for sale on social media websites, acted as a broker without being registered, registered AFA as an investment adviser without being eligible to do so, and made misrepresentations on AFA's and Platinum's websites and in AFA's Form ADV and brochure. Additionally, AFA did not have a policies and procedures manual until after October 2010.

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[1] Citations to the transcript are cited by hearing date and page number, for example, "5/21 Tr. 1." Citations to exhibits offered by the Division of Enforcement and by Respondent will be noted as "Div. Ex. __" and "Resp. Ex. __," respectively.

[2] 5/22 Tr. 5-48. Specifically, Stark was accepted as an expert on the identification and analysis of prime bank securities fraud schemes and the dangers presented by such schemes perpetrated using social media in the internet. Id. Stark has had a lengthy career specializing in this area with the Commission and then with Stroz Friedberg, a risk management and consulting firm that does digital forensics, electronic discovery, risk and security consulting, due diligence, private investigations, and compliance consulting. 5/22 Tr. 6-34; Div. Ex. 56A. On June 29, 2012, Fields filed a Motion to Strike Expert Witness' Oral and Written Testimony from the Court's Record and Pursue Charges of Perjury for Providing False Testimony Under Oath (Motion to Strike). The Motion to Strike, however, merely expresses a disagreement with Stark's testimony based on Fields's view of the facts at issue. Therefore, it will be denied.

## A. Respondent and Other Relevant Entities

### 1. Anthony Fields

Fields, of the Chicago, Illinois, area is an accountant. 5/21 Tr. 23, 25. He was licensed as a CPA in Illinois; his license lapsed in 2003. 5/21 Tr. 24. Fields studied for the FINRA[3] series 7 and series 63 examinations but did not take and/or pass them. 5/21 Tr. 74-76. Fields has never owned any publicly-traded stocks or bonds, except for a $100 U.S. Treasury security that he bought on TreasuryDirect to see how the system worked. 5/21 Tr. 50-51, 190-91. Fields has an outstanding federal tax liability of $120,000. 5/21 Tr. 48.

### 2. Anthony Fields & Associates

Fields is the sole proprietor of AFA. 5/21 Tr. 27. His residence is its office. 5/21 Tr. 40. Fields has conducted an accounting business under the AFA name since 1989, and its only revenues have come from income tax preparation. 5/21 Tr. 26, 47. Fields registered AFA as an investment adviser with the Commission in 2010. Div. Ex. 5. AFA never had any assets under management.[4] 5/21 Tr. 60-63. Nor did it have any employees (other than Fields's ex-wife who was not paid and did not perform any investment advisory services). 5/21 Tr. 43-45.

Fields was AFA's chief compliance officer. 5/21 Tr. 25, 84-85; Div. Ex. 5 at 23. AFA had a policies and procedures manual and a written code of ethics that Fields obtained from a vendor. 5/21 Tr. 89-97. The time when this occurred cannot be pinpointed from the evidence of record, but Fields did not finalize the policies and procedures manual until after October 2010 and did not print these documents in hard copy until after late May 2011. 5/21 Tr. 89-97.

### 3. Platinum Securities Brokers

Fields is the sole proprietor of Platinum. 5/21 Tr. 64. His residence is its office. 5/21 Tr. 64. Fields registered Platinum as a broker-dealer with the Commission in March 2010. 5/21 Tr. 65. He withdrew the registration, effective in September 2010, because FINRA told him that Platinum did not meet the net capital requirements. 5/21 Tr. 65-66, 5/22 Tr. 192. Fields claims that he resubmitted Platinum's application thereafter, but did not offer any additional evidence of this. 5/21 Tr. 100-04, 176, 182. Nor is there any other corroborating evidence. Accordingly, it is found that Platinum was not registered after September 2010. Platinum never provided brokerage services to any client, and Fields was never licensed as a registered representative. 5/21 Tr. 66-67. Platinum never had any revenues. 5/21 Tr. 68. Nor did it have any employees (other than Fields's ex-wife). 5/21 Tr. 64-65.

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[3] FINRA is the acronym commonly used to refer to the Financial Industry Regulatory Authority, Inc., a self-regulatory organization for the securities industry.

[4] Two potential clients registered with AFA but never received any investment advice or paid any fees. 5/21 Tr. 54-59.

## B. "Prime Bank" Instruments and Social Media

### 1. "Prime Bank" Instruments

So-called "prime bank" schemes typically are programs offering esoteric instruments associated with international banking that derive their supposed credibility from association with a major bank. 5/22 Tr. 62-65. They involve a purported secondary market for such "prime bank" instruments as standby letters of credit, bank guarantees, bank notes, and other formulations.[5] 5/22 Tr. 7, 58. There is in fact no secondary market for standby letters of credit, bank guarantees, or other prime bank instruments, and schemes that purport to sell such instruments on a secondary market are fraudulent. 5/22 Tr. 54-55, 72.

Prime bank schemes are typically shrouded in secrecy and characterized by a general lack of information, which is inexplicable and contrary to the best interest of investors. 5/22 Tr. 61, 66. Potential investors may be forbidden from contacting the bank allegedly involved in the scheme. 5/22 Tr. 61, 63, 108.

Prime bank schemes are usually unduly complex, with layers of unknown individuals, including the provider of the purported instrument involved in the transaction, for no understandable reason. 5/22 Tr. 94-95. The materials often refer to "top 10" or "AAA" rated banks, and may reference products such as Treasury bills, bonds, or certificates of deposit, or institutions such as the World Bank, Federal Reserve, or SWIFT to lend credibility and sophistication to the transaction.[6] 5/22 Tr. 59, 62, 64, 66. Typically they refer to complex transactions of large magnitude that do not make economic sense. 5/22 Tr. 50-51, 64, 93. For example, a bank that agreed to pay a dollar plus interest for something for which it only received forty cents would have to earn the full face value amount plus interest at the time the obligation

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[5] A legitimate standby letter of credit or bank guarantee might be used in international trade. For a fee, a bank, which has conducted due diligence on the buyer's credit, will guarantee payment to the seller of goods in another country; the seller can expect to receive any payment due because, in effect, the buyer's credit is replaced by the bank's. See Common Fraud Schemes, Federal Bureau of Investigation, http://www.fbi.gov/scams-safety/fraud (last visited Dec. 4, 2012); CitiBusiness Trade Services, Citibank Online, https://online.citibank.com/US/JRS/pands/detail.do?ID=CitiBizTrade (last visited Dec. 4, 2012). A standby letter of credit, therefore, is a private transaction between such a buyer and his bank; it is not possible to collateralize or securitize it and sell it on a secondary market. 5/22 Tr. 39, 41, 43, 46, 50, 55. Fields acknowledged that the purchaser in the purported secondary market would be subject to due diligence by the bank and would need the bank's authorization to purchase the guarantee. 10/21 Tr. 133.

[6] SWIFT stands for the Society for Worldwide InterBank Financial Telecommunication, which is a secure global communications network that is used by financial institutions to exchange information regarding transactions; it does not transfer funds. 5/22 Tr. 66-67; see also Swift Company Information, http://www.swift.com/info?lang=en (last visited Dec. 4, 2012).

comes due; the question becomes, what is the transactional source of the funding, whether from the bank or the customer?

Several federal and state government websites, of which official notice is taken pursuant to 17 C.F.R. § 201.323, warn against prime bank schemes.[7] For example, the TreasuryDirect website lists common terms associated with prime bank instrument fraud, some of which are a misuse of legitimate banking terms; they include "fresh cut," "roll," "debentures," "guarantees," "letters of credit," "seasoned," "mid-term notes," "tranche," "SWIFT," and "standby letter of credit."

The instruments at issue in this proceeding are referred to as bank guarantees (BGs) and mid-term notes (MTNs).

**2. Social Media**

LinkedIn is an online social network with a business to business (B2B) emphasis. 5/21 Tr. 111. LinkedIn has various discussion groups that users, such as Fields, can join. 5/21 Tr. 111-12. Such social media sites are an efficient way to reach potential investors. 5/22 Tr. 68-69. Fields advertised the availability of BGs and MTNs on LinkedIn and on two other B2B sites, TradeKey and E-2/Commerce, during 2010 and 2011. 5/21 Tr. 112-15. Fields's profile on LinkedIn during 2010 and 2011 contained links to AFA's and Platinum's websites. 5/21 Tr. 163-68; Div. Exs. 57, 57A. His profile on TradeKey also contained a link to AFA's website. 5/21 Tr. 215-16; Div. Ex. 64.

## C. Representations to Division Staff Concerning Transactions

On May 31, 2011, in a misguided attempt to show that AFA was qualified to be a Commission-registered investment adviser, Fields submitted to Division staff "contracts that I personally am engaged in as a Facilitator/introducer of Bank Gaurantees [sic] and MTNs (Mid Term Note). These contracts are very substantial and my commission on these contracts will provide the means necessary to support my advisery firm." Div. Ex. 37 at 1 and passim. The "contracts" are also in evidence as Division Exhibits 13, 14, and 15.

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[7] See Common Fraud Schemes, Federal Bureau of Investigation, http://www.fbi.gov/scams-safety/fraud (last visited Dec. 4, 2012); Types of Consumer Fraud, Office of the Comptroller of the Currency, http://www.occ.gov/topics/consumer-protection/fraud-resources/types-consumer-fraud.html (last visited Dec. 4, 2012); Prime Bank Instrument Fraud, TreasuryDirect, http://www.treasurydirect.gov/instit/statreg/fraud/fraud_primebank.htm (last visited Dec. 4, 2012); New York Fed Archived Fraud Alerts, Federal Reserve Bank of New York, http://www.ny.frb.org/banking/FRBNY_archived_fraud_alerts.html (last visited Dec. 4, 2012); "Prime Bank" Scams, Connecticut Department of Banking, http://www.ct.gov/dob/cwp/view.asp?a=2235&q=297952 (last visited Dec. 4, 2012); How Prime Bank Fraud Works, U.S. Securities and Exchange Commission, http://www.sec.gov/divisions/enforce/primebank/howtheywork.shtml (last visited Dec. 4, 2012).

Division Exhibit 13 is a document, dated March 7, 2011, attributed to W&F Investment Holding Ltd. (W&F) relating to "Fresh Cut BG" issued by HSBC, Barclays Bank UK, or AA+ rated bank for 5 million to 10 billion "EURO/USD," with "tranches" in the tens and hundreds of millions. The document also identifies its subject as "SBLC," referring to "Standby Letter of Credit." The price is indicated as 42% of the face value of the instruments plus a 2% commission.[8] The document contains several warnings against contacting the banks purportedly involved, including a capitalized warning at the bottom of each page: "UNAUTHORIZED BANK CONTACTS RESULT IN CONTRACT TERMINATION."

Division Exhibit 14 is a document, dated March 17, 2011, attributed to IF Capital SA Limited with similar terms and a prohibition against contacting the banks purportedly involved. Division Exhibit 15 is a document, dated March 16, 2011, attributed to Ocean Diamond International Limited and W&F relating to "Slightly Seasoned" €50 billion "Medium Term Notes, Senior Unsubordinated Bank debentures (cash-backed)" paying 7.5% interest. The price is indicated as 75% of the face value of the instruments plus a 1% commission. The document contains a prohibition against contacting the banks purportedly involved.

## D. Disclosures Made to Potential Investors

### 1. AFA's Form ADV

According to the Commission's public official records, of which official notice is taken pursuant to 17 C.F.R. § 201.323, AFA's July 15, 2010, Form ADV,[9] currently in effect, contains a number of unambiguously false representations – that AFA had assets under management of $25 million or more, that it had as clients high net worth individuals, pooled investment vehicles, and corporations or businesses, and that it had assets under management totaling $400 million[10] in four accounts. The Form ADV is also Division Exhibit 5. These representations were false because AFA did not have, and never has had, any assets under management; nor did it have four clients.[11] Attached to the Form ADV is AFA's brochure, which also contains inaccuracies, such as referring to Platinum as a registered broker-dealer, which was not true as of at least September 2010 when

[8] Fields explained that a price such as "40+1%" meant a sales price of 40% of the face value of the instrument plus a commission of 1% of the face value. 5/21 Tr. 127-31.

[9] Form ADV is the uniform form used by investment advisers to register with the Commission and state securities authorities. An investment adviser's most recent Form ADV appears on the Investment Adviser Public Disclosure website. Investment Adviser Public Disclosure, U.S. Securities and Exchange Commission, http://www.adviserinfo.sec.gov/IAPD/Content/IapdMain/iapd_SiteMap.aspx (last visited Dec. 4, 2012).

[10] Fields explained the claim that AFA had hundreds of millions of dollars of assets under management as based on the concept of "unearned revenue." 5/21 Tr. 60-63, 79, 82-83, 101.

[11] Fields had discussions with as many as four potential clients but could not recall all of their names. 5/21 Tr. 80-83.

Platinum's withdrawal became effective. The brochure is also Division Exhibit 6. The brochure indicates that AFA specializes in investments in U.S. Treasury and other U.S. government securities.

**2. Misrepresentations to Potential Investors on AFA's and Platinum's Websites**

**a. $50 Billion Contract**

Division Exhibit 20 is a printout, on May 20, 2011, of AFA's website. 5/21 Tr. 177-78. Under a "What's New" banner, the website states, "Anthony Fields & Associates has acquired a $50 billion contract!" The $50 billion contract is Division Exhibit 9. 5/21 Tr. 195. The document, dated January 6, 2010, specifies AFA as the seller and East West Trading, LLC (East-West), as the purchaser of $50 billion of U.S. Treasury Strips with "possible rolls and extension" and tranches in the hundreds of millions of dollars. Div. Ex. 9. The price is indicated as 22% of the face value of the instruments plus a 1% commission. Div. Ex. 9. Fields dealt with Vincent Bach (Bach) as the representative of East-West. 5/21 Tr. 197.

Fields had never dealt with, or even heard of, Bach before January 2010, but understood that Bach was a banker in Washington, D.C., and that Bach's grandfather owned a diamond mine in South Vietnam. 5/21 Tr. 197-98. Fields did not do any due diligence on Bach or East-West. 5/21 Tr. 198-99. Fields never received any money from East-West because he never sold it any securities. 5/21 Tr. 199. This was because Fields did not have $200 million to obtain the tranches to sell to East-West. 5/21 Tr. 199. Fields stated that he was planning to obtain the $200 million from Leston Williams (Williams) of Lakeshore Ventures Group, Inc. (Lakeshore), via a contract that is Division Exhibit 16. 5/21 Tr. 201-03. However, that document calls for AFA, not Lakeshore, to procure the funds. Div. Ex. 16. Fields addressed the discrepancy by stating that the written words of the document did not accurately describe how the contract was structured. 5/21 Tr. 203-05.

In a nutshell, the AFA website's representation that AFA had acquired a $50 billion contract was false: aside from the fact that his supposed buyer was a shadowy figure about whom Fields did no due diligence, Fields did not have any U.S. Treasury Strips and did not have the funding to buy them. His claim that he was planning to obtain the funding from Williams and Lakeshore in the face of a contract between AFA and Lakeshore that called for AFA, not Lakeshore, to procure the funding, underscores the misrepresentation.

**b. Platinum – a "Primary Dealer"**

The AFA website also notes that U.S. Treasury securities are issued through auctions and that participation in the auctions is limited to primary dealers that trade directly with the Federal Reserve System. Div. Ex. 20 at 3. The website continues, "[c]urrently there are 44 designated primary dealers. Our firm has an arrangement with the 45th primary dealer." Id. This was a reference to Platinum, which was not, in fact, a primary dealer, as Fields conceded, 5/21 Tr. 187, and according to the website of the Federal Reserve Bank of New York, of which official notice is

taken pursuant to 17 C.F.R. § 201.323, which lists the primary dealers.[12] Currently there are twenty-one primary dealers; there were twenty as of February 2, 2011, and eighteen between that date and July 27, 2009.[13] In harmony with representations on the AFA website, Platinum's website stated that it was a broker-dealer in U.S. Government securities and that it had "a portfolio of over 25,000 U.S. Government securities." 5/21 Tr. 168, 174-76; Div. Ex. 21 at 3.

**c. Staff**

As found above, AFA and Platinum had no employees (other than Fields's ex-wife). Yet, AFA's website stated, "[o]ur group of investment professionals are on hand when you need them!" 5/21 Tr. 177-81; Div. Ex. 20 at 1-3. Likewise, Platinum's website stated, "[w]e have a dedicated team of Government securities researchers waiting for your call 24 hours a day." Div. Ex. 21 at 4.

**d. Fields's Explanations of AFA, Platinum Website Representations**

Fields explained the representation on Platinum's website that it had "a portfolio of over 25,000 U.S. Government securities" as meaning that various brokers, such as Fidelity or Merrill Lynch, had such securities, and "[t]heir inventory is my inventory." 5/21 Tr. 175. Similarly, he explained the representation on the AFA website about "[o]ur group of investment professionals" as including all persons with whom he had contact at such entities as "Pershing, Fidelity, Merrill Lynch, DTCC," etc. 5/21 Tr. 180-81. He used similar reasoning to explain his claimed relationship to "top ten world banks" such as Barclays (recently opened checking account), HSBC (has spoken by telephone to a director and registered to open an account), JP Morgan Chase (checking account, knows an officer with whom he has not discussed BGs), and UBS (knows an officer). 5/21 Tr. 108-10, 136-43.

## E. Offerings on Social Media

Fields advertised the availability of BGs and MTNs on LinkedIn and on two other B2B sites, TradeKey and E-2/Commerce, during 2010 and 2011. 5/21 Tr. 112-17. He received approximately twenty to forty responses. 5/21 Tr. 115-16, 209-11; Div. Ex. 24 at 3, Div. Ex. 24A at 1. Fields does not have copies of some of these postings and communications as they have been deleted from LinkedIn and TradeKey; he did not maintain copies of this material himself. 5/21 Tr. 151-53; Div. Ex. 24 at 1.

For example, Fields posted notices to members of a LinkedIn discussion group named "Trade Platforms – Private Placement Programs (PPPs) – High Yield" offering BGs and MTNs and inviting interested persons to contact him. One notice offered "FRESH CUT BGs," "Cash Backed," issued by Deutsche Bank, Credit Suisse, HSBC, JP Morgan Chase, BNP Paribas, UBS, RBS, or Barclays for $500 billion with the "First Tranche" at $500 million. The price is indicated at 40% of

[12] Primary Dealers List, Federal Reserve Bank of New York, http://www.newyorkfed.org/markets/pridealers_current.html (last visited Dec. 4, 2012).

[13] Id.

the face value of the instrument plus a 1% commission to be paid to "Buy Side and Sell Side Consultants 50/50." 5/21 Tr. 121-32; Div. Ex. 25 at 2, Div. Ex. 25A at 2. Another notice to the same discussion group offered "FRESH CUT MTNs" issued by the same banks for $500 billion at 7.5% interest with the "First Tranche" at $500 million. The price is indicated at 30% of the face value of the instrument plus a 1% commission to be paid to "Buy Side and Sell Side Consultants 50/50." 5/21 Tr. 145-48; Div. Ex. 25 at 4, Div. Ex. 25A at 1. Fields received at least one response to this posting. 5/21 Tr. 207-11; Div. Ex. 25 at 4, Div. Ex. 25A at 1. Fields believed that the seller of both the BGs and MTNs was "Don Morgan," who was located in Switzerland and who Fields believed to be a relative of J.P. Morgan. 5/21 Tr. 141-42, 145, 148. Fields had never met, spoke with, or corresponded with "Don Morgan," but had corresponded with his representative whose name and location Fields was unsure of. 5/21 Tr. 145.

Fields posted another notice to the over 1,000 members of a LinkedIn discussion group named "Medium Term Notes (MTN) Exchange" offering "Slightly Seasoned" MTNs at a price of 66% plus 1% and received at least one response. 5/21 Tr. 160-61; Div. Ex. 24 at 3, Div. Ex. 24A at 1. He also offered "fresh cut" BGs at a price of 40% plus 1% and "slightly seasoned" BGs at a price of 56% plus 1% "cash backed" "top 10 world banks" to a group named "Real Deals for MTN's and BG's." 5/21 Tr. 154-59; Div. Ex. 24 at 2, Div. Ex. 24A at 4. Fields expected to receive commissions for his role in the proposed transactions. 5/21 Tr. 131, 148, 161-62. Fields had not, up to that point, brokered any transactions in the instruments. 5/21 Tr. 158-59. He cannot now recall the identity of the seller[s] in the proposed transactions. 5/21 Tr. 159, 162.

In October 2010, Steve Dills (Dills) responded to a posting by Fields on LinkedIn concerning a proposed transaction in MTNs. 5/21 Tr. 219-25; Div. Ex. 24 at 11, Div. Ex. 24A at 3. Fields told Dills that he was a principal of AFA. 5/21 Tr. 221. He emailed Dills on October 26, "I spoke to the sellers rep yesterday and they are putting things in motion." Div. Ex. 24 at 11, Div. Ex. 24A at 3. Fields did not actually have any MTNs but was hoping to find a seller and broker a transaction. 5/21 Tr. 223-25. Andreas Finger was the purported seller of the MTNs, but the identity of the real seller was secret. 5/21 Tr. 225, 5/22 Tr. 184. The transaction with Dills did not come to fruition, but Fields believes that Dills actually did purchase the MTNs, without Fields's intermediation, and then sold them to someone else. 5/21 Tr. 225, 5/22 Tr. 183-84.

### F. Fields's Role in the Events at Issue

Fields viewed his role as being a broker – limited to introducing a buyer and seller as an intermediary. 5/21 Tr. 143, 225, 5/22 Tr. 187, 199-200. He expected to be paid commissions for his role. 5/21 Tr. 131, 148, 161-62. Fields had not actually met, and was vague about the identity of, various individuals who were key to proposed transactions by which he was to have access to large quantities of BGs and MTNs. 5/21 Tr. 136-44, 148-49, 159, 162, 196-98, 201-02, 225, 5/22 Tr. 183-84. Fields believes that there is a secondary market for everything, even if the secondary market is a black market.[14] 5/22 Tr. 186, 190-91.

[14] As evidence that a secondary market exists for BGs and MTNs, Fields offered Respondent Exhibit 1, which contains a purported Credit Suisse "Letter of Guarantee" containing obvious typos. Resp. Ex. 1 at 1. It is dated, variously, Nov. 4 201 [sic] (in the heading) and Oct. 4, 201 [sic] (in the body), and "shall be duly honoured" is rendered "shall by duly honoured." Id. The

## G. Plans for the Future

Fields was equivocal on whether he will continue to be involved with BGs and MTNs in the future. 5/21 Tr. 119-21, 5/22 Tr. 200-02.

# III. CONCLUSIONS OF LAW

The OIP charges that Fields willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 15(a) of the Exchange Act, and Sections 203A, 204, 204A, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-2(a)(11), 204-2(e)(3)(i), 204A-1, 206(4)-1(a)(5), and 206(4)-7 thereunder. As discussed below, it is concluded that Fields violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 15(a) of the Exchange Act, and Sections 203A, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 thereunder, and that the violations of Sections 204 and 204A of the Advisers Act and Rules 204-2(a)(11), 204-2(e)(3)(i), and 204A-1 thereunder are unproven.

## A. Legal Standards

### 1. Fields is a Fiduciary

Fields d/b/a AFA is an investment adviser within the meaning of the Advisers Act. See Advisers Act Section 202(a)(11).[15] Fields as sole proprietor, sole principal, CEO, and chief compliance officer of AFA may also be considered an associated person of an investment adviser.[16] See Advisers Act Sections 202(a)(17), 203(f). Investment advisers and their associated persons are fiduciaries. Fundamental Portfolio Advisors, Inc., Securities Act Release No. 8251 (July 15, 2003), 56 S.E.C. 651, 684; see SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191-92, 194, 201 (1963); see also Transamerica Mortg. Advisors, Inc. v. Lewis,

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exhibit also includes a purported Bloomberg screenshot of a purported Deutsche Bank MTN with an ISIN that did not link back to Bloomberg. 5/22 Tr. 176-79; Resp. Ex. 1 at 2. As fakes, the two documents do not provide evidence that there is a secondary market in BG or MTN instruments.

[15] Section 202(a)(11) provides:

> "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . . .

[16] This is a distinction without a difference in the instant case. Where, as here, the investment adviser is an alter ego of the associated person, the associated person may be charged as a primary violator. John J. Kenny, Securities Act Release No. 8234 (May 14, 2003), 56 S.E.C. 448, 485 n.54, aff'd, 87 Fed. App'x 608 (8th Cir. 2004).

444 U.S. 11, 17 (1979). As fiduciaries, they are required "to act for the benefit of their clients, . . . to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients." SEC v. DiBella, No. 3:04-cv-1342 (EBB), 2007 WL 2904211, at *12 (D. Conn. Oct. 3, 2007) (quoting SEC v. Moran, 922 F. Supp. 867, 895-96 (S.D.N.Y. 1996)), aff'd, 587 F.3d 553 (2d Cir. 2009); see also Capital Gains Research Bureau, Inc., 375 U.S. at 194 ("Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients." (footnotes omitted)). "[W]hat is required is '. . . not simply truth in the statements volunteered but disclosure' [of material facts]." Capital Gains Research Bureau, Inc., 375 U.S. at 201. "The law is well settled . . . that so-called 'half-truths' – literally true statements that create a materially misleading impression – will support claims for securities fraud." SEC v. Gabelli, 653 F.3d 49, 57 (2d Cir. 2011).

**2. Willfulness**

In addition to requesting a cease-and-desist order pursuant to Sections 8A of the Securities Act, 21C(a) of the Exchange Act, and 203(k) of the Advisers Act, the Division requests sanctions pursuant to Sections 8A of the Securities Act, 15(b) and 21B of the Exchange Act, 203(e), 203(f), and 203(i) of the Advisers Act, and 9(b) of the Investment Company Act that require willful violations. A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. See Wonsover v. SEC, 205 F.3d 408, 413-15 (D.C. Cir. 2000); Steadman v. SEC, 603 F.2d 1126, 1135 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

**3. Materiality**

Advisers Act Section 207 proscribes material misstatements. The standard of materiality, applicable to Advisers Act Section 206 and Securities Act Section 17(a) as well, is whether or not a reasonable investor or prospective investor would have considered the information important in deciding whether or not to invest. See SEC v. Steadman, 967 F.2d 636, 643 (D.C. Cir. 1992); see also Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988); TSC Indus. v. Northway, Inc., 426 U.S. 438, 449 (1976). As fiduciaries, investment advisers have an affirmative duty of utmost good faith and full and fair disclosure of all material facts. See Capital Gains Research Bureau, Inc., 375 U.S. at 191-92, 194, 201.

**4. Scienter**

Scienter is required to establish violations of Securities Act Section 17(a)(1) and Advisers Act Section 206(1). SEC v. Steadman, 967 F.2d at 641 & n.3. It is "a mental state embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976); see also Aaron v. SEC, 446 U.S. 680, 686 n.5, 695-97 (1980); SEC v. Steadman, 967 F.2d at 641. Recklessness can satisfy the scienter requirement. See David Disner, 52 S.E.C. 1217, 1222 & n.20 (1997); see also SEC v. Steadman, 967 F.2d at 641-42; Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990). Reckless conduct is conduct which is

"'highly unreasonable' and . . . represents 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" Rolf v. Blyth, Eastman Dillon & Co., 570 F.2d 38, 47 (2d Cir. 1978) (quoting Sanders v. John Nuveen & Co., 554 F.2d 790, 793 (7th Cir. 1977)).

Scienter is not required to establish a violation of Securities Act Section 17(a)(3) or of Advisers Act Sections 206(2) and 206(4) and rules thereunder; a showing of negligence is adequate. See Capital Gains Research Bureau, Inc., 375 U.S. at 195; SEC v. Steadman, 967 F.2d at 643 & n.5; Steadman v. SEC, 603 F.2d at 1132-34.

### B. Advisers Act Sections 203A and 207

During the relevant period, Section 203A(a)(1) of the Advisers Act provided, "[n]o investment adviser that is regulated or required to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under Section 203, unless [it] has assets under management of not less than $25,000,000."[17] Section 203A(a)(3) defines "assets under management" as "the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services." Section 202(a)(13) defines "investment supervisory services" as "the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client."

Section 207 of the Advisers Act makes it unlawful for "any person willfully to make" material misstatements and omissions in applications and reports filed with the Commission under the Advisers Act.

The record shows that Fields d/b/a AFA never had any assets under management. Yet, AFA's July 15, 2010, Form ADV, currently in effect, represented that AFA had assets under management of $400 million. Thus, it is concluded that Fields d/b/a AFA violated Section 203A of the Advisers Act, because he maintained AFA's Commission registration while having less than $25 million in assets under management. Additionally, it is concluded that Fields violated Section 207 of the Advisers Act by willfully making an untrue statement of a material fact in the Form ADV. Overstating assets under management, which were actually nonexistent, to be hundreds of millions of dollars was untrue and clearly material. The misstatement was intended to qualify AFA for Commission registration when it did not so qualify. When questioned about the discrepancy between his claimed assets under management and assets whose existence was proved by his records, Fields claimed that he was relying on a principle of "unearned revenue" expected from a contract that fell through. On its own, this excuse is not entirely credible, and is made less so by being one of a series of similar excuses. Additionally, Fields did not amend the Form ADV after the supposed contract fell through. An additional untrue statement of a material fact in the Form ADV was the false claim that AFA had four clients. The violations of Sections 203A and 207 were clearly willful.

[17] The threshold was subsequently raised to $100,000,000 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Rules Implementing Amendments to the Investment Advisers Act of 1940, 76 Fed. Reg. 42950, 43011 (July 19, 2011).

## C. Antifraud Provisions

Fields is charged with willfully violating the antifraud provisions of the Securities and Advisers Acts – Sections 17(a)(1) and 17(a)(3) of the Securities Act and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder – which prohibit essentially the same type of conduct. United States v. Naftalin, 441 U.S. 768, 773 n.4, 778 (1979); SEC v. Pimco Advisors Fund Mgmt. LLC, 341 F. Supp. 2d 454, 469-70 (S.D.N.Y. 2004).

Section 17(a) of the Securities Act makes it unlawful "in the offer or sale of" securities, by jurisdictional means, to:

> 1) employ any device, scheme, or artifice to defraud;
>
> 3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Similar proscriptions are contained in Advisers Act Sections 206(1), 206(2), and 206(4),[18] as well as in Advisers Act Rule 206(4)-1(a)(5), which applies specifically to advertisements by investment advisers that contain "any untrue statement of a material fact or which is otherwise false or misleading."

Material misrepresentations and omissions violate Securities Act Section 17(a) and Advisers Act Sections 206(1), 206(2), and 206(4) and Rule 206(4)-1(a)(5).

## D. Antifraud Violations

The record shows that Fields violated the antifraud provisions by making material misstatements and omissions in AFA's Form ADV and on AFA's and Platinum's websites, all of which are intended to be seen by investors and potential investors, and in postings on social media and communications with potential investors. Additionally, he was involved in a scheme to defraud by attempting to broker transactions in BGs and MTNs.

### 1. Securities

The nonexistent instruments – BGs and MTNs – that were the subject of Fields's postings and emails were securities within the meaning of the federal securities laws. A note is a security as

[18] Section 206 makes it unlawful "for any investment adviser," by jurisdictional means:

> (1) to employ any device, scheme, or artifice to defraud any client or prospective client;
> (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; [or]
> (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

is the "evidence of indebtedness" purportedly represented by the BGs. See Section 2(a)(1) of the Securities Act. This is despite their nonexistence. They are a type of prime bank instrument that courts have found subject to the antifraud provisions of the securities laws; the fact that the investments being offered do not exist does not remove them from the reach of the antifraud provisions. See SEC v. Lauer, 52 F.3d 667, 670 (7th Cir. 1995); SEC v. Gallard, No. 95-cv-3099, 1997 U.S. Dist. LEXIS 19677, at *6-8 (S.D.N.Y. Dec. 10, 1997).

**2. Offer or Sale**

The activities at issue in this proceeding were "in the offer or sale of" securities within the meaning of Securities Act Section 17(a). "The term . . . 'offer' shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." See Pinter v. Dahl, 486 U.S. 622, 643 (1988); U.S. v. Naftalin, 441 U.S. at 773. Although none of his attempts was successful, Fields was attempting to arrange sales of BGs and MTNs for millions of dollars.

**3. Scienter**

Fields was at least reckless in not knowing that his trading program was a "device, scheme, or artifice to defraud." Promised returns far too good to be true, such as acquiring a 7.5% note issued by a well-known bank for 30% of its face value, are an indication of fraud. Further, the proposed deals do not make transactional sense: a bank which agreed to pay a dollar plus interest for something for which it only received 30 cents would have to earn the full face value amount plus interest at the time the obligation comes due. Additionally, Fields had little or no contact with persons purportedly involved in buying and selling the purported instruments and did not even know the names of some of them. Further, Fields's misrepresentations on the AFA and Platinum websites and in AFA's Form ADV and brochure were clearly made with an "intent to deceive" since Fields's representations – that AFA had a $50 billion contract and assets under management of $400 million, that Platinum was a primary dealer and had a portfolio of over 25,000 U.S. Government securities, and that AFA and Platinum had professional staffs – were so unambiguously false.

**4. Scheme to Defraud**

A program to trade instruments of a type for which no secondary market exists is clearly a scheme to defraud within the meaning of Securities Act Section 17(a). Fields hoped to reap millions of dollars in commissions for his role in such "trades."

**5. Material Misrepresentations**

The record shows material misrepresentations within the meaning of the Securities and Advisers Acts. In a nutshell, Fields's representations that the investments he was offering existed were false. His representations that he had inventory were false. Clearly, a reasonable investor would consider the nonexistence of the investment important in deciding whether or not to invest. Also, Fields's failure to disclose his lack of due diligence – he had never met or investigated persons who were supposedly key to transactions – was a material omission. Fields's misrepresentations on

Platinum's website violated Securities Act Section 17(a), and his misrepresentations on the AFA website and in AFA's Form ADV and brochure violated Advisers Act Sections 206(1), 206(2), and 206(4) and Rule 206(4)-1(a)(5).

In sum, it is concluded that Fields willfully violated the antifraud provisions of the Securities and Advisers Acts by his material misrepresentations and omissions and by his involvement in a scheme to defraud.

### E. Advisers Act Rule 206(4)-7

Advisers Act Rule 206(4)-7 requires a Commission-registered investment adviser that provides investment advice to "[a]dopt and implement written policies and procedures reasonably designed to prevent violation, by [the adviser], of the Act and the rules that the Commission has adopted under the Act." Fields violated this rule at least through October 2010 since AFA did not have a policies and procedures manual until after that date.

### F. Advisers Act Section 204A and Rule 204A-1

Pursuant to Advisers Act Section 204A and Rule 204A-1, Commission-registered advisers are required to establish a written code of ethics that deals with conflicts of interest and other matters and that requires supervised persons to comply with applicable federal securities laws. Although Fields did not print AFA's code of ethics in hard copy until after late May 2011, the date when he acquired the code from a vendor cannot be pinpointed from the evidence of record. Accordingly, in light of the Division's burden of proof, it is concluded that these charges are unproven.

### G. Advisers Act Books and Records Provisions

Section 204 of the Advisers Act requires Commission-registered advisers to maintain various records prescribed by the Commission in rules. Advisers Act Rule 204-2(a)(11) requires the adviser to keep "[a] copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons." Rule 204-2(e)(3)(i) requires that the records be maintained for five years from the end of the fiscal year during which the material was disseminated.

The Division argues that Fields violated Advisers Act Section 204 and Rules 204-2(a)(11) and 204-2(e)(3)(i). It argues that his postings on social media for viewing by members of the discussion groups were communications distributed to ten or more persons within the meaning of Advisers Act Rule 204-2(a)(11). Fields did not have copies of some of the postings and responsive communications as they had been deleted from LinkedIn and TradeKey and he did not maintain copies of the material himself. Accordingly, the Division argues, Fields violated these Advisers Act books and records provisions. However, it is clear from the evidence that Fields was acting as a broker in offering BGs and MTNs for sale through his postings and was not engaged in any investment advisory activities regulated under the Advisers Act. Accordingly, these charges are unproven.

### H. Exchange Act Registration Provision

Section 15(a)(1) of the Exchange Act makes it unlawful for any entity to effect transactions in securities, or to induce or attempt to induce such transactions, by jurisdictional means, without registering as a broker or dealer, or, if a natural person, without being associated with a registered broker or dealer. "Broker" is defined in Section 3(a)(4) of the Exchange Act as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4). Scienter is not required to establish a violation of this provision. SEC v. Montana, 464 F. Supp. 2d 772, 785 (S.D. Ind. 2006). "[T]ransaction-based compensation" is "one of the hallmarks of being a broker-dealer." SEC v. Kramer, 778 F. Supp. 2d 1320, 1334 (M.D. Fla. 2011) (quoting Cornhusker Energy Lexington, LLC v. Prospect Street Ventures, No. 8:04-cv-586, 2006 WL 2620985, at *6 (D. Neb. Sept. 12, 2006)). During the time at issue, Fields was neither registered as, nor a registered representative associated with a registered broker-dealer, and Platinum was not a registered broker-dealer after September 2010.

Fields was a broker according to his own description – he described himself as an intermediary who introduced a buyer and seller and expected to receive commissions on transactions that occurred. The evidence of record contains examples of his attempts to broker transactions in instruments that he had advertised on social media. Examples include the BGs and MTNs purportedly being sold by "Don Morgan." Fields received at least two expressions of interest in purchasing the MTNs. Another example was the October 2010 posting regarding MTNs, to which Dills responded and was told by Fields that he had spoken with the seller's representative and that "they are putting things in motion." Fields argues that he was not required to be registered as a broker because the contemplated transactions were private placements. This argument confuses the exemption from registration of instruments that can be the subject of private placements with the requirement for a broker to be registered. Accordingly, Fields violated Exchange Act Section 15(a)(1).

Fields also violated the registration provision by continuing to represent on Platinum's website that it was a registered broker-dealer after the withdrawal of its registration became effective and that he had a large portfolio of securities available for purchase.

## IV. SANCTIONS

The Division requests a cease-and-desist order, $200,000 in civil money penalties,[19] that AFA's registration as an investment adviser be revoked, and that Fields be barred from the securities industry. As discussed below, Fields will be ordered to cease and desist from violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 15(a) of the Exchange Act, and Sections 203A, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-1(a)(5)

[19] Specifically, the Division requests a $150,000 third-tier civil money penalty for violation of the antifraud provisions and a $50,000 second-tier penalty for violation of the books and records provisions.

and 206(4)-7 thereunder, and to pay a civil penalty of $150,000. AFA's registration as an investment adviser will be revoked and Fields will be barred from the securities industry.

## A. Sanction Considerations

In determining sanctions, the Commission considers such factors as:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d at 1140 (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, Advisers Act Release No. 2151 (July 25, 2003), 56 S.E.C. 695, 698. Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. Schield Mgmt. Co., Exchange Act Release No. 53201 (Jan. 31, 2006), 87 SEC Docket 848, 862 & n.46. As the Commission has often emphasized, the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, Advisers Act Release No. 2052 (Aug. 30, 2002), 55 S.E.C. 1133, 1145, aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., Exchange Act Release No. 11773 (Oct. 24, 1975), 46 S.E.C. 78, 100. The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); see also Leo Glassman, Exchange Act Release No. 11929 (Dec. 16, 1975), 46 S.E.C. 209, 211-12.

## B. Sanctions

### 1. Cease and Desist

Sections 8A of the Securities Act, 21C(a) of the Exchange Act, and 203(k) of the Advisers Act authorize the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of those Acts or rules thereunder. Whether there is a reasonable likelihood of such violations in the future must be considered. KPMG Peat Marwick LLP, Exchange Act Release No. 43862 (Jan. 19, 2001), 54 S.E.C. 1135, 1185. Such a showing is "significantly less than that required for an injunction." Id. at 1183-91. In determining whether a cease-and-desist order is appropriate, the Commission considers the Steadman factors quoted above, as well as the recency of the violation, the degree of harm to investors or the marketplace, and the combination of sanctions against the respondent. See id. at 1192; see also WHX Corp. v. SEC, 362 F.3d 854, 859-61 (D.C. Cir. 2004).

Fields's conduct was egregious and recurrent, continuing for months. The conduct involved at least a reckless degree of scienter. The lack of assurances against future violations and recognition of the wrongful nature of the conduct goes beyond a vigorous defense of the

charges. His chosen occupation in the financial industry will present opportunities for future violations. The violations were recent. Advertising fraudulent, non-existent securities for sale inherently harms the marketplace, harms the public-at-large, and adversely affects standards of conduct in the securities industry, even if no one remitted any funds to Fields. In light of these considerations, a cease-and-desist order is appropriate.

**2. Civil Money Penalty**

Sections 8A of the Securities Act, 21B of the Exchange Act and 203(i) of the Advisers Act authorize the Commission to impose civil money penalties for willful violations of the Securities, Exchange, Advisers, or Investment Company Acts or rules thereunder. In considering whether a penalty is in the public interest, the Commission may consider six factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. See Sections 21B(c) of the Exchange Act and 203(i)(3) of the Advisers Act; New Allied Dev. Corp., Exchange Act Release No. 37990 (Nov. 26, 1996), 52 S.E.C. 1119, 1130 n.33; First Sec. Transfer Sys., Inc., Exchange Act Release No. 36183 (Sept. 1, 1995), 52 S.E.C. 392, 395-96; see also Jay Houston Meadows, Exchange Act Release No. 37156 (May 1, 1996), 52 S.E.C. 778, 787-88, aff'd, 119 F.3d 1219 (5th Cir. 1997); Consol. Inv. Servs., Inc., Exchange Act Release No. 36687 (Jan. 5, 1996), 52 S.E.C. 582, 590-91.

Fields violated the antifraud provisions, so his violative actions "involved fraud [and] reckless disregard of a regulatory requirement" within the meaning of Sections 21B(c)(1) of the Exchange Act and 203(i)(3) of the Advisers Act. Although the harm cannot be quantified, his actions inherently harmed the marketplace and the public-at-large. Deterrence also requires substantial penalties against Fields.

Penalties are in the public interest in this case. Penalties in addition to the other sanctions ordered are necessary for the purpose of deterrence. See Sections 21B(c)(5) of the Exchange Act and 203(i)(3)(E) of the Advisers Act; see also H.R. Rep. No. 101-616 (1990). The Division requests that Fields be ordered to pay a $150,000 third-tier penalty for violations of the antifraud provisions and a $50,000 second-tier penalty for violation of the books and records provisions. Third-tier penalties, as the Division requests, are appropriate because Fields's violative acts involved fraud and created a significant risk of substantial losses to other persons. See Sections 21B(b)(3) of the Exchange Act and 203(i)(2)(C) of the Advisers Act. Under those provisions, for each violative act or omission after March 3, 2009, the maximum third-tier penalty is $150,000 for a natural person. 17 C.F.R. §§ 201.1004. The provisions, like most civil penalty statutes, leave the precise unit of violation undefined. See Colin S. Diver, The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies, 79 Colum. L. Rev. 1435, 1440-41 (1979).

The events at issue will be considered as one course of action, and the $150,000 penalty that the Division requests for the antifraud violations will be imposed. Under the circumstances, the second-tier penalty that the Division requests for additional violations, some of which are unproven, will not be imposed.

### 3. Bar and Revocation

The Division requests that AFA's registration as an investment adviser be revoked and Fields be subject to an industry bar. The sanctions that the Division requests will be ordered. Combined with other sanctions ordered, the bar and revocation are in the public interest and appropriate deterrents. The violations involved scienter. Fields's business provides him with the opportunity to commit violations of the securities laws in the future. The record shows a lack of recognition of the wrongful nature of the violative conduct.

## V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on August 9, 2012.

## VI. PROCEDURAL ORDER

IT IS ORDERED that Fields's Motion to Strike Expert Witness' Oral and Written Testimony from the Court's Record and Pursue Charges of Perjury for Providing False Testimony Under Oath IS DENIED.

## VII. ORDER

IT IS ORDERED that, pursuant to Sections 8A of the Securities Act, 21C(a) of the Exchange Act, and 203(k) of the Advisers Act, Anthony Fields, CPA d/b/a Anthony Fields & Associates and d/b/a Platinum Securities Brokers CEASE AND DESIST from committing or causing any violations or future violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 15(a) of the Exchange Act, and Sections 203A, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 thereunder.

IT IS FURTHER ORDERED that, pursuant to Sections 8A of the Securities Act, 21B of the Exchange Act and 203(i) of the Advisers Act, Fields PAY A CIVIL MONEY PENALTY of $150,000.

IT IS FURTHER ORDERED that, pursuant to Section 203(e) of the Advisers Act, the REGISTRATION of Anthony Fields & Associates as an investment adviser IS REVOKED.

IT IS FURTHER ORDERED that, pursuant to Sections 15(b) of the Exchange Act, 203(f) of the Advisers Act, and 9(b) of the Investment Company Act, Anthony Fields IS BARRED from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent and IS PROHIBITED, permanently, from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

IT IS FURTHER ORDERED that the allegations that Fields violated Sections 204 and 204A of the Advisers Act and Rules 204-2(a)(11), 204-2(e)(3)(i), and 204A-1 thereunder ARE DISMISSED.

Payment of penalties shall be made on the first day following the day this Initial Decision becomes final. Payment shall be made by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the Securities and Exchange Commission. The payment, and a cover letter identifying Respondents and Administrative Proceeding No. 3-14684, shall be delivered to: Office of Financial Management, Accounts Receivable, 100 F Street N.E., Washington, DC 20549-6042. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111(h) of the Commission's Rules of Practice, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

_____

Carol Fox Foelak
Administrative Law Judge